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The Honorable Karen A. Overstreet  
Chapter 11

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In Re	)	
	)	
CLI HOLDINGS, INC. dba ALYDIAN,	)	CASE NO. 13-19746-KAO
	)	
Debtor.	)	MOTION TO RECONSIDER <i>EX PARTE</i>
	)	ORDER GRANTING MOTION FOR
	)	RULE 2004 EXAM OF BITVESTMENT
	)	PARTNERS, LLC AND FOR
	)	PRODUCTION OF DOCUMENTS

15 On December 18, 2013, the Debtor filed an ex parte motion (“Rule 2004 Motion”)  
16 seeking an order requiring Bitvestment Partners, LLC f/k/a Dalsa Barbour LLC  
17 (“Bitvestment”) to produce certain documents described on Exhibit A to the Rule 2004  
18 Motion and to designate a representative to be examined under oath as to its claim against  
19 Debtor’s estate to take Place on January 14, 2014 at the Law Offices of Keller Rohrback  
20 L.L.P. in Seattle. On December 19, 2013, the Court entered an order (the “Order”) granting  
21 the Debtor’s Rule 2004 Motion. Bitvestment respectfully requests that the Court reconsider  
22 the Order because the Rule 2004 Motion is procedurally and substantively improper,  
23 unnecessary, burdensome to Bitvestment and filed for the purpose of harassment of a creditor  
24 of the estate.

25 The Debtor has failed to establish good cause for the examination. While the Rule  
26 2004 Motion asserts that the subject of the examination is Bitvestment’s claim against the

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1 estate, Bitvestment has not yet filed a proof of claim and the bar date for doing so does not  
2 expire until December 31, 2013. Without having seen Bitvestment's proof of claim and the  
3 supporting documentation, the Debtor has no way of determining whether there will be a  
4 further need for a Rule 2004 examination and cannot establish good cause for the relief  
5 requested in the Rule 2004 Motion. Bitvestment submits that any proof of claim it files will  
6 be supported by the appropriate documentation as required pursuant to Fed. R. Bankr. P.  
7 3001 and the Official Form B10, which should satisfy the Debtor's inquiries. Moreover, in  
8 the spirit of cooperation, Bitvestment has volunteered to provide the Debtor with information  
9 should the Debtor have outstanding questions or requests following the filing of  
10 Bitvestment's proof of claim. It is obvious that the examination requested by the Debtor is  
11 unnecessary and improper, and is clearly nothing more than a harassment tactic by a  
12 frustrated Debtor who itself has actively thwarted all disclosure requests in violation of Court  
13 orders<sup>1</sup> and requests from the US Trustee. It is axiomatic that a Rule 2004 examination  
14 cannot be used to harass or abuse other parties, or to inquire into irrelevant matters. *See e.g.*  
15 *In re Lufkin*, 255 B.R. 204, 209 (Bankr. E.D. Tenn., 2000).

16 Further, exhibit "A" to the Rule 2004 Motion requests production of documents that  
17 have no relation to Bitvestment's proof of claim and absolutely no bearing on the instant  
18 bankruptcy case as required under Fed. R. Bankr. P. 2004(b). For example, the Debtor  
19 requests information about Bitvestment's corporate structure, name, bylaws and corporate  
20 minutes, and provides no insight as to why such information could be relevant to the  
21 administration of the case or the Court's assessment of Bitvestment's claim. Bitvestment is a  
22 party to an agreement with the Debtor pursuant to which the Debtor owes an obligation to  
23 Bitvestment. The Debtor has itself acknowledged<sup>2</sup> and this Court has entered an order<sup>3</sup>  
24 acknowledging that Bitvestment is the party in interest pursuant to said agreement. There is

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<sup>1</sup> Docket No. 56.

26 <sup>2</sup> Docket No 1 (List of 20 Largest Unsecured Creditors and Mailing Matrix).

<sup>3</sup> Docket No. 54.

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1 no pending contested matter or adversary proceeding raising any issue which necessitate  
2 production of any of the documents listed on Exhibit A to the Rule 2004 Motion. The Debtor  
3 has not, and cannot, establish that the production of the records listed on Exhibit A may be  
4 pertinent and potentially admissible on the question of the validity and the amount of  
5 Bitvestment's claim. It is the Debtor and not Bitvestment that has defaulted on its  
6 obligations to the creditors and sought Chapter 11 bankruptcy protection. As such, it is the  
7 Debtor's and not Bitvestment's operations and conduct that are of consequence and  
8 discoverable in this case.

9 In addition, the Rule 2004 Motion imposes undue hardship and expense upon  
10 Bitvestment by requiring its designated representative to attend an examination in the offices  
11 of the Debtor's attorney in Seattle. Fed. R. Bankr. P. 9016(c) provides:

12 (1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible  
13 for issuing and serving a subpoena must take reasonable steps to avoid imposing  
14 undue burden or expense on a person subject to the subpoena. The issuing court must  
15 enforce this duty and impose an appropriate sanction – which may include lost  
16 earning and reasonable attorneys' fees – on a party or attorney who fails to comply.

17 Bitvestment's only representative, Mr. Gallancy, is a New York resident who  
18 currently resides and conducts business in New York, and has no ties to Seattle or this  
19 district. Requiring Mr. Gallancy to appear for a Rule 2004 examination at the offices of the  
20 Debtor's attorney in Seattle imposes undue burden on Mr. Gallancy as it is overly disruptive  
21 and costly. While Bitvestment maintains that the Debtor has failed to establish cause for the  
22 examination, to the extent the Court finds such examination appropriate, it should take place  
23 in New York, the state of Mr. Gallancy's residence.

24 Finally, the Debtor's Rule 2004 Motion is procedurally inadequate and the Order  
25 granting it cannot operate to require Bitvestment to attend a deposition and produce records  
26 at the time and place specified in the Rule 2004 Motion. Fed. R. Bankr. P. 2004(c) provides  
that attendance at an examination and production of documents may be compelled "as

1 provided in Rule 9016.” Here, the Debtor’s Rule 2004 Motion (and the attached proposed  
2 order) set forth a specific date, time and place for production of documents and attendance at  
3 an examination by Bitvestment. An order granting a motion for a Rule 2004 examination  
4 does not replace a subpoena issued pursuant to Fed. R. Bankr. P. 9016, and cannot alone  
5 operate to compel production of documents and attendance at an examination.

6 For the foregoing reasons, Bitvestment respectfully requests that Court reconsider the  
7 Order, deny the Debtor’s Rule 2004 Motion, impose an appropriate sanction on the Debtor  
8 for failure to comply with Fed. R. Bankr. P. 9016(c)(1), and enter any other relief it finds just  
9 and equitable.

10 DATED this 19th day of December, 2013.

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